

RECEIVED
CENTRAL FAX CENTER
MAY 01 2008

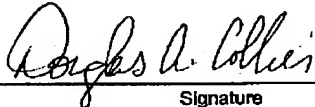
Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) MSDI-219/PC902.00							
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>May 1, 2008</u> Signature <u><i>Douglas A. Collier</i></u> Typed or printed name <u>Douglas A. Collier</u>		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">Application Number 10/769,569</td> <td style="width: 50%; padding: 2px;">Filed January 30, 2004</td> </tr> <tr> <td colspan="2" style="padding: 2px;">First Named Inventor Roy Lim</td> </tr> <tr> <td style="padding: 2px;">Art Unit 3733</td> <td style="padding: 2px;">Examiner Anuradha Ramana</td> </tr> </table>		Application Number 10/769,569	Filed January 30, 2004	First Named Inventor Roy Lim		Art Unit 3733	Examiner Anuradha Ramana
Application Number 10/769,569	Filed January 30, 2004								
First Named Inventor Roy Lim									
Art Unit 3733	Examiner Anuradha Ramana								
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>									
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>43,556</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<div style="text-align: center;">  _____ Signature Douglas A. Collier _____ Typed or printed name (317) 238-6333 _____ Telephone number May 1, 2008 _____ Date </div>							
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.									
<input type="checkbox"/> *Total of _____ forms are submitted.									

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

MAY 01 2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:)	Before the Examiner
Roy Lim)	Anuradha Ramana
)	
Application Serial No. 10/769,569)	Group Art Unit 3733
)	
Filed: January 30, 2004)	Ref. No. MSDI-219/PC902.00
)	
INSTRUMENTS AND METHOD FOR)	
MINIMALLY INVASIVE SPINAL)	May 1, 2008
STABILIZATION)	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

In response to the Final Office Action dated November 1, 2007, please enter and consider the following. A Notice of Appeal, and form PTO/SB/33 Pre-Appeal Brief Request for Review is submitted herewith along with the fee under 37 CFR 41.20(b)(1). No extensions of time are believed due since a response to the Final Office Action was submitted December 5, 2007, within two months of the mailing of the Final Office Action, and no subsequent Advisory Action or other communication from the USPTO has been received. However, please provide any extensions of time that may be necessary and charge any additional fees due, or credit any overpayment, to Deposit Account 12-2424, but not including the payment of issue fees.

I hereby certify that this correspondence is
being facsimile transmitted to the United States
Patent and Trademark Office at 571-273-8300
on:

May 1, 2008
(Date of Transmission)

Douglas A. Collier
Name of Registered Representative

Douglas A. Collier
Signature

May 1, 2008
Date of Signature

Pre-Appeal Brief Request for Review
Serial No. 10/769,569
Atty. Docket No. MSDI-219/PC902.00
Page 1 of 2

MAY 01 2008

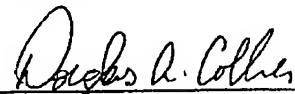
REMARKS

In the Final Office Action mailed November 1, 2007, claims 1-20, 50, 52-58, 91-116, 120-137 were pending. Claims 19, 53-56, 105, 120 and 130 were withdrawn as being directed to non-elected species. Claims 50, 52, 57-58, 106-116, 121-129 and 131-137 were allowed, and claims 5, 7-18, 20, 94 and 96-104 were objected to but indicated to be allowable if rewritten in independent form incorporating the base claim and any intervening claims. Claims 1-4, 6, 91-93, and 95 stand rejected. This Pre-appeal Brief Request for Review requests entry of the amendment filed December 5, 2007. Entry is proper since the amendment removes all issues for appeal and places the application in condition for allowance.

The amendment submitted on December 5, 2007, was presented to rewrite objected to claims in allowable form and place the application in condition for allowance. Specifically, claim 1 was been amended to include claims 2 and 5, and claims 2 and 5 were cancelled. Claims 3 and 6 are amended to depend from claim 1 in view of the cancellation of claim 2. Claims 7, 10 and 20 were rewritten in independent form incorporating the version of claim 1 prior to the above amendment of claim 1. Claim 91 was been amended to include claims 92-94 therein, and claims 92-94 were cancelled. Claims 96 and 97 were rewritten in independent form incorporating claim 91 therein in its version prior to the above amendment. Withdrawn claim 19, 53-56, 105, 120 and 130 depend from allowable base claims, and reinstatement of the withdrawn claims was requested.

Upon entry of the December 5, 2007 amendment, no remaining issues remain for appeal and the present application is in condition for allowance. Therefore, entry of the December 5, 2007 amendment is proper and a Notice of Allowance is hereby requested.

Respectfully submitted,

By: 
Douglas A. Collier, Reg. No. 43,556
Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204-2079
(317) 238-6333 (voice)

Pre-Appeal Brief Request for Review
Serial No. 10/769,569
Atty. Docket No. MSDI-219/PC902.00
Page 2 of 2